

Before the Board of Zoning Adjustment, D. C.

Application No. 11901, of Nello Picca and Claude L. Benner, Jr., trustees for Eurania Associates, a District of Columbia Partnership, pursuant to Section 7501.4 and 8207.2 of the Zoning Regulations, for further processing to permit construction of a new office building for office and retail uses and under ground parking to a height not to exceed 130 ft. as approved by the Zoning Commission by Order No. 101, dated December 13, 1974, and as provided by Sections 7501.42, 7501.43, 7501.44, 7501.39, and approval of roof structures as provided by Sections 7501.46, in the SP Zone, located at 1333 New Hampshire Avenue, N. W., Lots 41 - 46, 50-56, 819 and 822, Square 115.

HEARING DATE: June 18, 1975

DECISION DATE: June 24, 1975

FINDINGS OF FACT:

1. Applicant requests further processing of its planned unit development pursuant to Section 7501.4 of the Zoning Regulations to permit construction of a new building, not to exceed 130 feet in height and containing office, retail commercial uses and underground parking.

2. The Zoning Commission, in Case No. 74-10/71-30F, after public hearing, has approved the final application of the planned unit development, as more specifically set forth in Zoning Commission Order No. 101, dated December 13, 1974.

3. Pursuant to requirements of Section 7501.41 of the regulations applicant has filed the following:

- a. Typical floor plans and architectural floor plans for the building - drawings A-7 through A-11.
- b. Roof plans and architectural elevations of the roof structure - drawings A-9.
- c. Final grading and drainage plan - drawing A-2

- d. Planting and landscaping plans - drawing A-2.
- e. Finished site plan with lot area and dimension - drawing A-11.
- f. Detailed parking plans - drawings A-3 through A-6.

4. The subject application is the second (2nd) and final stage of the planned unit development with the first (1st) stage having been approved by the Board in BZA Order No. 11875, effective April 28, 1975.

5. The staff report of the Municipal Planning Office Zoning Services Division dated May 14, 1975, and subsequent testimony at public hearing verify that the plans submitted to the Board for further processing are identical to those previously submitted to the Zoning Commission in Case No. 74-101/71-30 F, except for the additions of dimensions to some drawings.

6. The Board finds that the plans are inconsistent with the conditions of Z.C. Order No. 101 only as follows:

- a. The roof structure drawing shows the elevator overside extends five (5) feet beyond the seventeen (17) foot height limit for roof structures set forth in the Zoning Regulations and in Condition No. 6 of the Commission's Order.
- b. Condition No. 8 of the Commission's Order requires parking to be provided at the rate of one (1) space per 2,000 square feet of gross floor area. Applicant's plans are inconsistent by providing 160 parking spaces instead of the correct number of 151 spaces as computed from 301,434 square feet of gross floor area on the subject property.

7. The Board is implementing the planned unit development as finally approved by the Zoning Commission Order No. 101 with no amendments.

8. The Board finds that the development plan is in harmony with the objectives of Section 7501 of the regulations and pursuant to Section 7501.44 the Board will limit commercial signs erected on the subject property to those permitted in

accordance with the Building Code provisions relating to commercial sign regulations.

9. Pursuant to Section 7501.45 of the regulations in accordance with Zoning Commission Order No. 101, all uses permitted in the C-3-B Zone will be permitted on the subject property except no banks may be established. The Board also finds that the landscaping, planting, screening and drainage plans are adequate and pursuant to Section 7501.45 (d) the Board incorporates by reference Zoning Commission Order No. 101 and all conditions contained therein.

10. The Board takes notice of the entire Zoning Commission file in Case No. 74-10/71-30 F and incorporates said file by reference herein.

11. Applicant has complied with the requirements of Section 7501.39 of the regulations.

12. Board member Martin Klauber was requested by Dupont Circle Citizens Association, the opposition party, to disqualify himself from the case on the basis of his dual responsibilities as Executive Secretary to the Zoning Commission and as member of the Board of Zoning Adjustment. Mr. Klauber declined to disqualify himself but he was unable to be present at the public hearing and therefore did not vote on the case.

13. The basis of the opposition by Dupont Circle Citizen's Association protested the approval of the subject planned unit development by the Zoning Commission instead of opposing its implementation by the Board. The opposition party noted an allegedly radical change of circumstances occurring since Zoning Commission Order No. 101 was issued making the approval of the planned unit development unacceptable to the opposition party.

14. The Board finds that all testimony and evidence relating to the discretion of the Zoning Commission in approving the planned unit development is irrelevant to these proceedings as the Board's jurisdiction pursuant to Section 7501 of the Zoning Regulations encompasses only the implementation of the development.

15. The opposition party objected to the form of the Board's notice of public hearing in this matter and the Board finds that the notice is adequate pursuant to Section 3.3 of the Board's Supplemental Rules of Practice and Procedure.

16. The opposition party objected further to the alleged claim of ownership of the subject property by the applicant. The Board finds pursuant to the testimony at public hearing that applicant, Eurania Associates is the owner of the subject property.

17. Notice of the public hearing on this matter has been sent to all abutting property owners and occupants of property within two hundred (200) feet of the subject party pursuant to the Board's rules. This includes, in this case, each occupant of the Apollini Apartments and the Sunderland Building as set forth in the affidavits of record.

18. The record indicates three (3) letters of support from owners and occupants of property in the immediate area voicing their opinion that the neighborhood would be improved by the proposed planned unit development.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact and the evidence of record the Board concludes that the applicants have complied with the requirements of Section 7501.4 for further processing of the planned unit development by the Board. It is a further determination of this Board that said development is in harmony with the objectives of Section 7501. of the regulations and consistent with the intent of Zoning Commission Order No. 101. The purpose of the Board's jurisdiction in this matter is only to implement the ~~second~~ (2nd) and final stage of development of the planned unit development and there is no reason as suggested by the opposition party to explore behind the rationale of the Zoning Commission's Order of approval of the development.

Therefore, the Board approves the subject application for further processing of the final stage of development pursuant to the plans set forth in drawings A-2 through A-11 on file in the record and subject to each and every condition set forth in Zoning Commission Order No. 101 including but not

limited to the following:

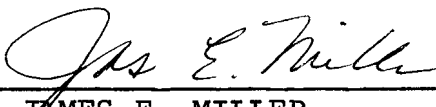
- a. The new building shall not exceed 130 feet in height. Any roof structures in excess of that limit, as normally permitted by the regulations, shall not exceed 17 feet in height.
- b. Parking shall be provided at the rate of one (1) space per 2,000 square feet of gross floor area.
- c. Approval of the application by the Commission and the Board of Zoning Adjustment shall not relieve the applicants of the responsibility of conforming to all other applicable codes and ordinances of the District of Columbia.
- d. The change of Zoning shall not be effective until the recordation of the covenant required by subsection 7501.2 to include conditions for the preservation of the Heurich Mansion and Carriage House and completion of the planned unit development process.
- e. This Order of the Board shall not become effective until applicants (property owners) of the planned unit development have filed the required covenants insuring compliance with the Zoning Commission Order of approval and completion of the planned unit development.
- f. Commercial signs erected on the property shall be limited to those permitted in accordance with the Building Code provisions relating to commercial signs regulations.
- g. This Order of the Board shall be valid for a period of eighteen (18) months. Within such period plans shall be filed for the purpose of securing a building permit.
- h. Construction of this final stage of development shall begin within eighteen (18) months of the effective date of this Order and shall be completed in toto within two (2) years of said date.
- I. The Board shall retain jurisdiction to interpret and apply the terms and conditions of this Order and to make plan corrections and minor modifications of such plans.

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ORDER: It is hereby Ordered that the above application be
GRANTED CONDITIONALLY:

VOTE: 3-0-1 (Mr. Klauber not voting after not having heard
the case, and Lilla Burt Cummings, Esq.. dissenting,
on the basis that the opposition was not afforded a
hearing thereby being denied due process of law and
that the Board misinterpreted its authority to act
under Section 7501.43 of the regulations. The
dissenting member will file a dissenting opinion
and requests that the Order not be issued without
said dissenting opinion) to GRANT the above application.)

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 
JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: 9/18/75

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX
MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY
PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE
DATE OF THIS ORDER.

Board of Zoning Adjustment, D. C.

Application No. 11901 of Nello Picca and Claude Brenner, trustees, pursuant to Sub-section 8207.2 of the Zoning Regulations, for further processing of a Planned Unit Development under Sub-section 7501.4 and for approval of roof structures under Paragraph 7501.46 to permit construction of a new office building as approved by Zoning Commission Order No. 101 in the SP District at the premises 1333 New Hampshire Avenue, N. W. (Square 115, Lots 41-46, 50-56 819 and 822).

HEARING DATE: June 18, 1975

DECISION DATE: June 24, 1975

DISPOSITION: Application granted with conditions by a vote of 3-1 (Harps, Scrivener and McIntosh to grant, Cummings to deny, Klauber not voting after not Having heard the case).

FINAL DATE OF THE ORDER: ~~September~~ 18, 1975

ORDER

Upon consideration of the opposition's Motion for Stay of Order for Further Processing Pending Decision or Petition for Review by the District of Columbia Court of Appeals, dated October 15, 1975, the Board finds that the motion ~~does~~ not set forth adequate grounds for the Board to stay its own Order, and that the petitioner has recourse through the courts if it desires further relief. It is therefore ordered that the request for stay be DENIED.

VOTE: 3-1 (Harps, McIntosh and Klauber deny, Scrivener to grant, by proxy and Cummings not present, not voting).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT).

ATTESTED BY: _____

STEVEN E. SHER

Acting Secretary to the Board

FINAL DATE OF ORDER: **MAR** 1 1976